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6 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**  
7 **OF THE STATE OF CALIFORNIA**  
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9 In the Matter of the Application of:

**Precedent Decision No. 01 - 02**

10 **Amado E. Ramos**  
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12 A hearing on this application was held on June 7, 2001, in Los Angeles, California by  
13 Judith A. Kopec, Hearing Officer; assigned to hear this matter by the Executive Officer of the Victim  
14 Compensation and Government Claims Board (Board).

15 The applicant, Amado E. Ramos, attended the hearing.

16 **Claim History**

17 The application was received on March 27, 2000; was recommended for denial on the  
18 December 5, 2000, consent calendar; and was appealed.

19 **Summary of Issues**

20 Staff recommended the denial of the application because staff determined that there was  
21 insufficient evidence that Mr. Ramos was the victim of a qualifying crime.

22 **Findings of Fact**

23 At ten in the morning on April 21, 1999, Mr. Ramos was driving eastbound on the Angeles Crest  
24 Highway through the Angeles National Forest delivering mail to residences in the National Forest.  
25 He had driven this road twice a day, six days a week for six years. The Angeles Crest Highway is a  
26 two-lane roadway that winds through hilly terrain.  
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1 According to the police report, the maximum speed on the road was 55 miles per hour. Two  
2 warning signs were posted for westbound traffic: one advised of a “winding roadway” ahead, the other  
3 advised a speed of 25 miles per hour for the approaching curve.

4 Steven Altamirano, an 18-year-old high school senior, was driving westbound on the Angeles  
5 Crest Highway with three friends, also high school seniors: Ismael Esparza, 18 years old, was in the  
6 front passenger seat; Michael Lazzara, 17 years old, was in the left rear seat; Noelle Camara, 17 years  
7 old, was in the center rear seat; and Luis Abarca, 18 years old, was in the right rear seat. They left  
8 school that morning to take a ride during a free period.

9 Mr. Ramos testified that he was driving uphill at 30 to 35 miles per hour into what he described  
10 as a “blind curve.” According to the police report, the road was curving to Mr. Ramos’s left.  
11 Mr. Altamirano was driving downhill, and the road was curving to Mr. Altamirano’s right. As  
12 Mr. Ramos entered the curve, he saw Mr. Altamirano’s car cross the double yellow line and hit him.  
13 Mr. Ramos was pinned in the car, unable to move. He saw that his engine was smoking and he was  
14 afraid that the car was going to catch fire.

15 Mr. Ramos was extracted from the car and taken to a hospital, suffering fractures of his neck,  
16 back and left femur, laceration of his liver, and injury to his right eye. Mr. Ramos spent four months  
17 in the hospital. His left leg remains numb and he walks with a cane. He has been unable to work since  
18 the collision.

19 In a statement in the police report, Mr. Altamirano stated that he believed the speed limit was 30  
20 to 35 miles per hour, but admitted driving about 60 miles per hour. Since he was going downhill at the  
21 time of the collision, he acknowledged that he was probably going faster than 60 miles per hour when  
22 he hit Mr. Ramos. He claimed that he knew how to control the car, but he warned his passengers to  
23 fasten their seat belts “just in case.” Mr. Altamirano admitted hearing his tires screech while driving  
24 around curves prior to the collision. He stated that he had driven this road four or five times prior to  
25 the collision, the most recent being about two months earlier.

26 According to statements in the police report, several of Mr. Altamirano’s friends repeatedly told  
27 him to slow down. Mr. Esparza stated that they had passed three cars before the collision, one of which  
28 was done by illegally crossing the double yellow lines. Mr. Lazzara reported telling Mr. Altamirano to  
29 slow down, saying, “I don’t want to die here.” Mr. Abarca stated that Mr. Altamirano repeatedly sped

1 up and then slowed down as though he were trying to scare them. He also reported that the car crossed  
2 the double yellow lines twice while going around curves.

3 According to the police report, Mr. Altamirano suffered fractures to the left clavicle, a rib and  
4 both arms; Ms. Camara fractured her back in two locations and had minimal motor activity of her legs;  
5 Mr. Abarca suffered internal injuries and contusions; and Mr. Lazzara suffered torn ligaments and  
6 contusions on his back.

7 The investigation by the California Highway Patrol determined that Mr. Altamirano was driving  
8 between 57.6 and 64.2 miles per hour when his car began to leave skid marks on the road before the  
9 collision. The investigation report concluded that Mr. Altamirano deliberately drove at twice what he  
10 believed the speed limit to be prior to the collision. The report also concluded that Mr. Altamirano  
11 knew of his unsafe driving maneuvers and blatantly disregarded the safety of others. The report found  
12 that

13 Mr. Altamirano violated Vehicle Code sections 21460(a) [Double yellow lines]; 23103(a) [Reckless  
14 driving]; 23104(a) [Reckless driving causing bodily injury]; and 22349 and 22350 [Speed limit].

15 According to court documents submitted by Mr. Ramos, Mr. Altamirano was charged with five  
16 counts of violating Vehicle Code section 23104(a) [Reckless driving causing bodily injury]. Prior to  
17 trial, Mr. Altamirano pled nolo contendere to and was found guilty of one count of violating Vehicle  
18 Code section 23104(a). The remaining counts were dismissed in furtherance of justice. Mr. Altamirano  
19 was sentenced to 30 days in county jail and placed under three years of summary probation.

### 20 **Determination of Issues**

21 An application shall be granted if a preponderance of the evidence shows that as a direct result of  
22 a crime, the victim incurred an injury resulting in a pecuniary loss. (Gov. Code, § 13964(a).) The  
23 applicant has the burden of proving, by a preponderance of the evidence, all issues necessary to establish  
24 eligibility, including the elements of the qualifying crime. (Cal. Code Regs., tit. 2, §§ 647.32, 653.4.)<sup>1</sup>  
25 Significant weight may be given to the evidence from and conclusions of a law enforcement agency  
26 after investigation when determining whether or not a qualifying crime occurred. (Reg. § 653.5(b).)  
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<sup>1</sup> All citations to regulations are to Title 2, California Code of Regulations.

1 Unless specifically authorized, no act involving the operation of a vehicle constitutes a qualifying  
2 crime. (Gov. Code, § 13960(c).) The following specific crimes are qualifying crimes if injury or death  
3 results: hit and run [Veh. Code, § 20001]; murder when a vehicle is the instrumentality of the murder.  
4 [Pen Code, § 187]; gross vehicular manslaughter while intoxicated [Pen. Code, § 191.5]; vehicular  
5 manslaughter [Pen. Code, § 192(c)]; and driving under the influence of alcohol or drugs  
6 [Veh. Code, § 23153]. (Gov. Code, § 13960(c); Reg. § 654.1(b).) The following are also qualifying  
7 crimes: a crime in which injury or death is intentionally inflicted through the use of a vehicle; and a  
8 crime involving a vehicle in which injury is caused by a person under the influence of alcohol or drugs,  
9 or caused by a driver of a vehicle fleeing a crime scene are also qualifying crimes. (*Ibid.*)

10 There is insufficient evidence of a violation of any of the identified Vehicle Code sections.  
11 There is also insufficient evidence that Mr. Altamirano was under the influence of alcohol or drugs at  
12 the time of the collision. In order for this to be a qualifying vehicle crime, the injury must be  
13 “intentionally inflicted through the use of a vehicle.” (Gov. Code, § 13960(c)(1).)

14 Vehicle Code section 23103 defines reckless driving as driving a vehicle “in willful or wanton  
15 disregard for the safety of persons or property.” Mr. Altamirano was convicted of a violation of  
16 Vehicle Code section 23104(a), which provides that a person engaging in reckless driving that  
17 proximately caused bodily injury to another person is guilty of a misdemeanor. It must be determined  
18 if the injury caused by Mr. Altamirano’s reckless driving was intentionally inflicted through the use of  
19 a vehicle. If it was, then Mr. Ramos was the victim of a qualifying crime.

20 It must be determined what is required to show that an injury was “intentionally inflicted” by a  
21 vehicle. A general intent crime requires only an intent to do the act that causes the harm. A specific  
22 intent crime requires an intent to cause the resulting harm. (*People v. Atkins* (2001) 25 Cal.4<sup>th</sup> 76, 86;  
23 104 Cal.Rptr.2d 738, 745.) The word ‘intentionally’ in a penal statute does not generally imply that the  
24 offense is a specific intent crime; ‘intentionally’ requires only that the person acted intentionally in  
25 engaging in the proscribed conduct. (*People v. Ramsey* (2000) 79 Cal.App.4<sup>th</sup> 621, 632; 94 Cal.Rptr.2d  
26 201, 308.)

27 In order to prove the offense of reckless driving, it must be shown that the driver “. . . in the  
28 management of his automobile at the time and place in question intentionally did something with  
29

1 knowledge that injury to another was probable or acted with a wanton and reckless disregard for the  
2 safety of others and in reckless disregard of the consequences of his acts. [Citation omitted.]”  
3 (*People v. Schumacher* (1961) 194 Cal.App.2d 335, 338; 14 Cal.Rptr. 924, 926.) The elements of  
4 wantonness include: (1) consciousness of one’s conduct; (2) an intent to do the act in question; (3)  
5 realization of probable injury to another; and (4) reckless disregard of the consequences. (*Id.*, 194  
6 Cal.App.2d at p. 340; 14 Cal.Rptr. at p. 927.) For the purpose of reckless driving, willful means  
7 intentional disregard of safety. (*Ibid.*)

8 It is determined that a violation of Vehicle Code section 23104[Reckless Driving] is not by itself  
9 sufficient to prove that a qualifying vehicle crime occurred. The underlying facts constituting a  
10 violation of Vehicle Code section 23104 [Reckless Driving] must be analyzed to determine whether  
11 injury was intentionally inflicted through the use of a motor vehicle.

12 There is sufficient evidence that Mr. Altamirano intentionally drove his car at excess speed into a  
13 sharp curve knowing that harm was likely to result. He warned his passengers to make sure they had  
14 their seat belts on, presumably to minimize any injury. He knew that entering the curves on this road  
15 at excessive speed was likely to cause his car to cross over the double yellow lines into incoming  
16 traffic. Considering the entire record, there is sufficient evidence that Mr. Altamirano intentionally  
17 inflicted injury through the use of his vehicle.

### 18 Order

19 The application shall be allowed and all verified, covered pecuniary losses should be reimbursed.

20 Date: July 13, 2001  
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**Precedent Decision No. 01 - 02**

12 On July 13, 2001, the Victim Compensation and Government Claims Board modified its Decision  
13 in the above-referenced matter and adopted the attached Decision as a Precedent Decision. The Decision  
14 became effective on July 13, 2001.  
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16 Date: July 23, 2001

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18 CATHERINE CLOSE  
19 Chief Counsel  
20 Victim Compensation  
21 and Government Claims Board  
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